

1 BILL NO. S-82-02-08

2 SPECIAL ORDINANCE NO. S- 39-82

3 AN ORDINANCE approving a contract for  
4 Water Resolution 1025-81, between the  
5 City of Fort Wayne and Brooks Construction  
main.

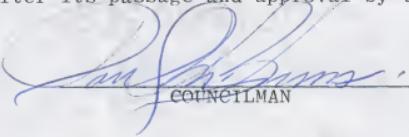
6 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF  
7 FORT WAYNE, INDIANA:

8 SECTION 1. That a certain contract, dated January 27,  
9 1982, between the City of Fort Wayne, Indiana, by and through  
10 its Mayor and the Board of Public Works and Brooks Construction  
11 Company for:

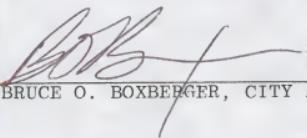
12 the installation of a 6" diameter water  
13 main including all necessary fittings  
14 on the south side of Chinchilla Lane  
from South Anthony Blvd., southeastwardly  
15 to its terminus, also, on Chantada Lane  
from South Anthony Blvd., eastward to  
Chinchilla Lane,

16 under Board of Public Works Water Resolution 1025-81, at a  
17 total cost of \$40,912.65, all as more particularly set forth  
18 in said Contract which is on file in the Office of the Board of  
19 Public Works and is by reference incorporated herein and made a  
20 part hereof, be and the same is in all things hereby ratified,  
21 confirmed and approved.

22 SECTION 2. That this Ordinance shall be in full force  
23 and effect from and after its passage and approval by the Mayor.

24   
25 COUNCILMAN

27 APPROVED AS TO FORM AND  
28 LEGALITY FEBRUARY 5, 1982.

29   
30 BRUCE O. BOXBERGER, CITY ATTORNEY  
31

32

Read the first time in full and on motion by Burns,  
seconded by Stier, and duly adopted, read the second time  
by title and referred to the Committee City Utilities (and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 2-9-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns,  
seconded by Costich, and duly adopted, placed on its  
passage. PASSED (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
<u>TOTAL VOTES</u>	<u>2</u>	—	—	<u>2</u>	—
<u>BRADBURY</u>	<u>X</u>	—	—	—	—
<u>BURNS</u>	<u>X</u>	—	—	—	—
<u>EISBART</u>	<u>X</u>	—	—	—	—
<u>GiaQUINTA</u>	<u>X</u>	—	—	—	—
<u>NUCKOLS</u>	—	—	—	<u>X</u>	—
<u>SCHMIDT</u>	—	—	—	<u>X</u>	—
<u>SCHOMBURG</u>	<u>X</u>	—	—	—	—
<u>STIER</u>	<u>X</u>	—	—	—	—
<u>TALARICO</u>	<u>X</u>	—	—	—	—

DATE: 2-23-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)  
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 139-82  
on the 23rd day of February, 1982

ATTEST:

Charles W. Westerman

CHARLES W. WESTERMAN - CITY CLERK

(SEAL)

Samuel J. Talarico

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 24th day of February, 1982, at the hour of  
11:00 o'clock A. M., E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 24th day of Feb.  
1982, at the hour of 4 o'clock P. M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

BILL NO. S-82-02-08

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN  
ORDINANCE approving a contract for Water Resolution 1025-81, between  
the City of Fort Wayne and Brooks Construction Company for the  
installation of a water main

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE *OK* *PASS.*

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

2-23-82 CONCURRED IN  
DATE 2-23-82 BY W. WEAVER, CITY CLERK

Barrett  
2/9/82

11-116-3

1/27/82

BARRETT LAW CONTRACT

(REVOLVING FUND)

WATER RESOLUTION NO. 1025-81

BOARD ORDER NO. 114-81

WORK ORDER NO. 63534

THIS CONTRACT made and entered into in triplicate this 17<sup>th</sup> day of January, 1982, by and between BROOKS CONSTRUCTION CO., INC., herein called CONTRACTOR, and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER,

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE I. SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to install a 6" diameter water main including all necessary fittings as follows:

On the south side of Chinchilla Lane from South Anthony Boulevard southeastwardly to its terminus, also, on Chantada Lane from South Anthony Boulevard eastward to Chinchilla Lane,

all according to Fort Wayne Water Utility Drawing No. Y-10558, Sheets 1 thru 5, and do everything required by this Contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the Contract the sum of forty thousand, nine hundred twelve dollars and sixty-five cents, (\$40,912.65). In the event the amount of work is increased or decreased by OWNER, the Contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The OWNER shall not make progress payments on account of the Contract.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT (BARRETT LAW)

It is proposed that the entire cost, i. e., construction, engineering, easement damages, highway permits, inspection, advertising, area connection charges, etc., are to be financed through assessments to the benefited property owners. Payment for the work performed and materials supplied by the successful bidder will be made by the City Controller from funds now on hand in the "Barrett Law Revolving Fund."

The Contractor shall file a "Completion Affidavit" with the Board of Public Works which indicates that the work on the project is substantially completed for acceptance by the City. The Water Engineering Department of the City of Fort Wayne, Indiana will inspect the project and promptly inform the Contractor in writing of any deficiencies in the project for acceptance.

The Engineer may recommend to the OWNER to proceed with the public hearing on the confirmation of the final assessment roll even though all surface deficiencies on the project have not been fully satisfied, providing sufficient and adequate monies are retained by the City Controller to perform the necessary work. The OWNER shall determine at this public hearing both the amount of monies which will be sufficient to perform the uncompleted work and the satisfactory method of assurance that the work will be accomplished as contracted.

The City Controller will pay to the CONTRACTOR, within 60 days after the confirmation of the final assessment roll by the Board of Public Works, such amount as has been determined just and due, based upon the work performed and materials supplied by the CONTRACTOR in performing this project. However, all cash payments collected from the property owners in an amount not to exceed the engineering, easement damages, highway permits, inspection, advertising, area connection charges, etc., costs for the project, shall be retained by the City.

#### ARTICLE 5. WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act (I. C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of CONTRACTOR, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation Acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

#### ARTICLE 6. NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-17 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12, 1978, a copy of which Section is by this reference incorporated herein and made a part hereof.

#### ARTICLE 7. PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay and also require of his Subcontractors that they pay wage rates on the work covered by this Contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935, which is by this reference incorporated herein and made a part hereof.

#### ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the Contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Resolution No. 1025-81.
- b. Instructions to Bidders for Resolution No. 1025-81.
- c. Contractor's Proposal Dated January 6, 1982.
- d. Fort Wayne Water Utility Engineering Department Drawing No. Y-10558 Sheets 1 thru 5.
- e. Supplemental Specification for Water Resolution No. 1025-81.
- f. Detailed Specifications and Conditions for the Installation of Transmission and Distribution Mains of the Fort Wayne Water Utility.
- g. Construction Standards and Water Main and Water Service Materials Standards of the Fort Wayne Water Utility, Engineering Department, latest revision, except as modified in the Supplemental Specifications.
- h. Workman's Compensation Act (I. E. 22-3-2-1).
- i. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- j. Prevailing Wage Scale
- k. Performance and Guaranty Bond.

#### ARTICLE 9. GUARANTEE OF WORKMANSHIP

At the time of execution of this Contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this Contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the water main by the City.

#### ARTICLE 10. INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER.

#### ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility, and his decision shall be final and conclusive upon the parties. No changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

#### ARTICLE 12. COMPLETION DATE

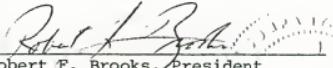
The CONTRACTOR agrees to complete the work specified in the Contract within 180 consecutive calendar days after having been ordered by the OWNER to commence work under this Contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

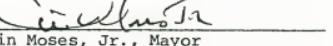
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BROOKS CONSTRUCTION CO., INC.

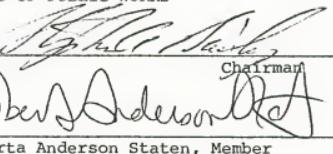
By:   
Robert F. Brooks, President

By:   
Donna M. Bell  
Secretary

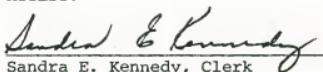
CITY OF PORT WAYNE, INDIANA

By:   
Win Moses, Jr., Mayor

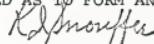
BOARD OF PUBLIC WORKS

  
Roberta Anderson Staten, Member  
Chairman

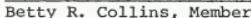
ATTEST:

  
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

  
K. D. Monoff

City Attorney

  
Betty R. Collins, Member

Approved by the Common Council of the City of Fort Wayne on \_\_\_\_\_ day of  
\_\_\_\_\_, 1982.

Special Ordinance No. \_\_\_\_\_

**AMERICAN STATES INSURANCE COMPANY**  
HOME OFFICE: INDIANAPOLIS, INDIANA  
PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we Brooks Construction Company, Inc.

\_\_\_\_\_, as Principal, (hereinafter called Principal) and AMERICAN STATES INSURANCE COMPANY, an Indiana corporation, with principal offices in Indianapolis, Indiana, as Surety, (hereinafter called Surety), are held and firmly bound unto The City of Fort Wayne \_\_\_\_\_, as Obligee, (hereinafter called the Obligee) in the amount of Forty Thousand Nine Hundred Twelve and 65/100 \_\_\_\_\_ Dollars (\$ 40,912.65 \_\_\_\_\_) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns firmly by these presents.

WHEREAS, the Principal did on the 27th day of January 1982, enter into a written contract with said Obligee for Water Resolution No. 1025-81, Board Order No. 114-81, and Work Order No. 63534 which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall indemnify the Obligee against any loss or damage directly arising by reason of the failure of the Principal to (a) faithfully perform said contract and (b) pay all just claims for labor and material furnished in the completion of said Contract by persons, firms or corporations having direct contracts with the Principal, then this obligation shall be null and void; otherwise to remain in full force and effect.

This bond is executed and accepted subject to the following conditions:

- (1) That the Obligee shall faithfully and punctually perform all the terms and conditions of said Contract to be performed by the Obligee.
- (2) That the Obligee shall notify the Surety by registered letter, addressed and mailed to it at its Home Office, of any breach of said Contract within a reasonable time after such breach shall have come to the knowledge of the Obligee.
- (3) All suits at law or proceedings in equity to recover on this bond must be instituted within six months after the completion of said contract, and in any event within twelve months from the date fixed in said contract for its completion.

SIGNED, SEALED AND DATED this 27th day of July, 1998

## January

19.82

(Seal)

Brooks Construction Company, Inc.

AMERICAN STATES INSURANCE COMPANY

BY: N. Richard Boerger

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**Attorney-in-fact:**

# American States Insurance Company

## INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by these presents make, constitute and appoint \_\_\_\_\_

----- N. RICHARD BOERGER AND RONALD L. WIGHTMAN -----

(Jointly or Severally)

of Fort Wayne and State of Indiana  
its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings,

provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed FIVE HUNDRED THOUSAND AND NO/100 (\$500,000.00) DOLLARS -----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise"

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President,

attested by its Assistant Secretary and its corporate seal to be hereto affixed this 15th day of May

A. D. 1974

(SEAL)

ATTEST: Stanley L. Riegel

Assistant Secretary

STATE OF INDIANA } SS:  
COUNTY OF MARION }

AMERICAN STATES INSURANCE COMPANY

By William M. Evans  
Second Vice-President

On this 15th day of May, A. D. 1974, before me personally came

William M. Evans

being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is Vice-President of American States Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name

thereto by like order. And said William M. Evans further said that he is acquainted with Stanley L. Riegel and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

January 10, 1977

My Commission Expires

Linda Disney

Notary Public

STATE OF INDIANA } SS:  
COUNTY OF MARION }

I, Thomas M. Ober, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of the following resolution of the Board of Directors of American States Insurance Company at a meeting duly called and held on the 15th day of December 1972.

"RESOLVED: That the use of a printed facsimile of the corporate seal of the company and of the signature of an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice-President pursuant to Section 7.07 of the By-Laws appointing and authorizing an Attorney-in-Fact to sign in the name and on behalf of the company surety bonds, underwriting undertakings or other instruments described in said Section 7.07, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 20th

day of January, A. D. 1974

(SEAL)

Form 9-1459 (12-72)

Thomas M. Ober  
Assistant Secretary

5605

TITLE OF ORDINANCE Water Res. 1025-81, Dellwood Park Addition (Chinchilla & Chantada Lns.)

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

S-82-02-08

SYNOPSIS OF ORDINANCE Installation of a 6" diameter water main including all

necessary fittings on the south side of Chinchilla Lane from South Anthony Blvd. southeastwardly to its terminus, also, on Chantada Lane from South Anthony Blvd. eastward to Chinchilla Lane.

The contract was awarded to Brooks Construction Co.

EFFECT OF PASSAGE Installation of 6" water main

EFFECT OF NON-PASSAGE The above water main will not be constructed.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$40,912.65 - Barrett Law  
Revolving Fund.

ASSIGNED TO COMMITTEE